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CONCORD, N.H.

1953

Dec. 16

His Excellency, Hugh Gregg,  
Governor of New Hampshire  
State House  
Concord, New Hampshire

Dear Governor Gregg:

On December 14, 1953, you informed us that the Civil Defense Agency proposes in the near future to conduct a practice drill or alert and you have requested our views on certain questions which have arisen in connection therewith.

You ask whether civil defense workers are empowered by law to compel compliance on the part of the civilian population with the official directions given for the conduct of the alert, and we reply in the negative.

We searched the statute (Laws of 1949, c. 334, as amended by Laws of 1953, c. 234) in vain for provisions conferring powers of such a nature either upon the governor or upon subordinate civil defense officials and personnel at times other than during a state of civil defense emergency. Indeed, the power to conduct practice alerts and drills is merely implied, except when done in cooperation with extra-state agencies.

The general civil defense powers of the governor are set forth in section 5 of the statute. Subparagraph I of the section authorizes the governor:

"To make, amend, and rescind necessary orders, rules and regulations, to carry out the provisions hereof within the limits of the authority conferred upon him herewith."

There follows in this section a specification of various matters with

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which he may deal; it is with respect to these, it is believed, that such orders, rules and regulations were intended to apply.

In contrast with the power to "make, amend and rescind" orders, rules and regulations, appears the power to enforce the same. The power of enforcement is given to the governor only in section 7 of the statute and that section relates to power to be exercised only upon the declaration that a statutory civil defense emergency exists. Such emergency, you will note, may be declared to exist only upon a finding that

"... an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural disaster of major proportions has actually occurred within this state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section . . ."

One additional power of importance is conferred by section 7 which does not appear in section 5. Your attention is invited to section 7 (c), which authorizes the governor

"To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population."

It is believed that the provision last quoted is the one upon which reliance must be had when, in the face of a true emergency, it is deemed essential to apply compulsive force to the civilian population.

Sections 5 and 7 may logically be reconciled. The power given in the section first listed may be deemed organizational and preparatory. The rules, regulations and orders of the governor promulgated under section 5 are binding throughout the civil defense organization as a matter of executive control over subordinates; those dealing with persons generally, however, lack binding force until, upon the declaration of a state of civil defense emergency, the power to enforce arises. Orders, rules and regulations of the latter class may be made as a matter of preparation — enforcement depends upon the necessary finding and proclamation.

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These matters bear, then, upon such questions as the immunity of civil defense personnel from civil suit (section 11) and the power of such personnel (section 10) -- as well as of peace officers (section 12) -- to compel compliance with civil defense orders, rules and regulations. Immunity, it will be seen, flows from actions of personnel taken with respect to "any order, rule or regulation promulgated pursuant to this chapter". Similar language appears in connection with the sections dealing with the enforcement powers of civil defense personnel and peace officers. The key to immunity and to the power of enforcement lies in compliance with the statute.

It is therefore our conclusion that while the Civil Defense Agency may conduct practice drills and alerts, the compliance of the civilian population with the various orders, rules and regulations governing the same may not be compelled; rather, civil defense personnel are limited merely to seeking the voluntary cooperation of the people.

Respectfully,

Harold E. Maters  
Deputy Attorney General

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